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Honorable Timothy D. Dore

4
5 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

6 **WILLIAMS, Christopher James,**

7 Debtor.

8 **WILLIAMS, Christopher James,**

9 Plaintiff,

10 v.

11 **UNITED STATES OF AMERICA**
ACTING THROUGH THE U.S.
12 **DEPARTMENT OF EDUCATION and**
MOHELA,

13 Defendants.

Number 22-11289

Adversary Number:

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF STUDENT
LOANS**

14 Christopher James Williams, the Debtor (hereinafter "Plaintiff") allege as follows:

15 **A. Jurisdiction**

16 1. That this Court has jurisdiction over this proceeding pursuant to 28 U.S.C. 1334 & 28
17 U.S.C. 157(b)(2)(G). This matter relates to a case under Title 11 of the United States Code.
18 This proceeding is defined as a "core proceeding" as that is defined in the Code. Plaintiff
19 consents to entry of final orders or judgment by the bankruptcy court in this adversary
20 proceeding.

21 **B. History**

22 2. Plaintiff filed his Chapter 13 Bankruptcy Proceeding in the United States bankruptcy
23 court for the Western District of Washington on August 10, 2022, under case number 22-
24 11289.

1 3. That this Court upon the filing of the Petition duly entered an Order for Relief under
2 the provisions of the Bankruptcy Code.

3 4. That Jason Wilson-Aguilar was appointed the chapter 13 Trustee in the Williams
4 Chapter 13 case and serves in that capacity in this case.

5 **C. Facts and Allegations**

6 5. That pursuant to 11 USC § 523(a)(8) educational benefit overpayment or loan made,
7 insured, or guaranteed by a governmental unit, or made under any program funded in whole
8 or in part by a governmental unit or nonprofit institution; or an obligation to repay funds
9 received as an educational benefit, scholarship, or stipend; or any other educational loan that
10 is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of
11 1986, incurred by a debtor who is an individual are nondischargeable unless excepting the
12 debt from discharge would impose an undue hardship on the debtor or the debtor's
13 dependents. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 278 (2010) ("the
14 bankruptcy court must make an independent determination of undue hardship . . . even if the
15 creditor fails to object or appear in the adversary proceeding."). This inquiry is undertaken
16 through a formal adversary proceeding in the bankruptcy court. *United Student Aid Funds*, 559
17 U.S. at 263-64; Fed. R. Bankr. P. 7001(6).

18 6. That Defendant, MOHELA, is the loan servicer for Defendant, United States of America
19 acting through U.S. Department of Education with regard to Plaintiff's student loans.

20 7. That Plaintiff believes and alleges that the repayment of student loans to Defendants
21 would impose an undue hardship on Plaintiff. The amount owed is approximately
22 \$238,000.00.

23 8. That on or about the 17th day of November 2022, the Department Justice issued
24 Guidance for Department of Justice Attorneys with regard to Student Loan Bankruptcy
25 Litigation which Plaintiff is requesting the Defendants utilize in evaluating whether

1 Plaintiff's student loans should be discharged. Plaintiff acknowledges that the Guidance
2 Memorandum is an internal Department of Justice policy directed at Department components and
3 employees and it is not intended to and does not create any rights, substantive or procedural,
4 enforceable at law by any party in any matter.

5 9. Plaintiff requests that upon receipt of this Complaint that Defendants will provide
6 Plaintiff's attorney with the record of Plaintiff's account history, loan details, and, where
7 available, educational history.

8 10. Upon receipt of the information from Defendants as to Plaintiff's student loans,
9 Plaintiff will prepare and file in this adversary proceeding an Attestation (as prescribed by
10 the Department of Justice) in order to assist Defendants in stipulating to facts demonstrating
11 that the debts would impose an undue hardship on the Plaintiff and recommend to the Court
12 that Plaintiff's students loan be discharged if three conditions are satisfied: (1) Plaintiff
13 presently lacks an ability to repay the loan; (2) Plaintiff's inability to pay the loan is likely to
14 persist in the future; and (3) Plaintiff has acted in good faith in the past in attempting to repay
15 the loan.

16 11. Upon receipt of Plaintiff's Attestation Plaintiffs request that Defendants stipulate to facts
17 demonstrating that a debt would impose an undue hardship and recommend to this Court that
18 Plaintiff's student loan be discharged

19 **D. Request for Relief**

20 WHEREFORE, Plaintiff respectfully requests the entry of a judgment declaring the debts
21 owed Defendants to be dischargeable debts and such other and further relief as the Court.

22 Dated this 9th day of December 2022.

23 Law Offices of Travis Gagnier, Inc., P.S.
24 Attorneys for Plaintiff

25 /s/ Travis A. Gagnier
26 Travis A. Gagnier, WSBA #26379
Gregory Jalbert, WSBA #9440